

**TITLE 329 SOLID WASTE MANAGEMENT BOARD**

**LSA Document #10-66**

**SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD**

The Indiana Department of Environmental Management (IDEM) requested public comment from February 1, 2012, through March 2, 2012, on IDEM's draft rule language. IDEM received comments from the following parties:

AT&T Services, Inc. (AT&T)  
Environmental, Health & Safety Communications Panel (EHSCP)  
ITR Concession Company (ITRCC)

Following is a summary of the comments received and IDEM's responses thereto.

*Comment:* AT&T Services, Inc., by counsel, expresses its concurrence and support of the attached comments submitted by the Environmental, Health & Safety Communications Panel in the referenced rulemaking. Should you have any question, please contact the undersigned. (AT&T)

*Comment:* The Environmental, Health & Safety Communications Panel ("EHSCP"), previously known as the National Telecommunications Safety Panel ("NTSP"), is pleased to provide comments in response to proposed revisions to LSA Document #10-66 (UST Operator Training Program).

The EHSCP is a consortium of telecommunications environmental, health, and safety professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the telecommunications industry'. The EHSCP strives to provide constructive input in the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the telecommunications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies when issues concern the telecommunications industry. More information regarding the EHSCP may be found at [www.ehscp.org](http://www.ehscp.org).

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<sup>1</sup> The EHSCP member companies include Alcatel- Lucent, AT&T, CenturyLink, Ericsson, Cincinnati Bell, NextG Networks, Sprint-Nextel, T-Mobile, Verizon, Verizon Wireless, and Windstream Communications

The member companies provide telecommunications services to federal, state and local government agencies, business and households nationwide. The same members' systems provide emergency communications for government, industry and private citizens. EHSCP member companies own and operate underground fuel storage tanks throughout the U.S. Some of these tanks support boilers and other building systems but the bulk of the USTs support emergency power generators which provide backup power to maintain critical infrastructure during power outages, natural disasters, and other emergencies. The EHSCP member companies do not sell regulated substances and do not dispense fuel from USTs that support emergency power generation. Many of these tanks are at unmanned, remote locations. (EHSCP)

*Response* (to the above two comments): IDEM thanks the companies for providing their history and background information and their goals and objectives. IDEM appreciates the role and efforts of the panel with regards to this rulemaking for the benefit of its constituents as well as IDEM.

*Comment:* **Definition of unattended facility**

Many telecommunication facilities that support our wireline infrastructure are also unmanned. Therefore, we recommend the following wording change..

**329 IAC 9-9-2(e)**

**"Unattended facility" means a UST system facility that operates under the applicable provisions of this article without the daily presence of a certified operator. Such a facility includes the following:**

- (1) An emergency generator at a telecommunications tower or facility.**
- (2) A card lock/card access facility. (AT&T, EHSCP)**

*Comment:* **329 IAC 9-9-2 Sec. 2 (e) as proposed:**

Sec. 2 (e) (1) is believed to be too limiting. Many other locations are used for emergency standby generators than purely telecommunication towers. I believe a better description would be:

**(1) An emergency standby generator UST limited to occasional use during normal service power loss.**

Sec. 2 (e) (2) is believed to be too limiting. Many other devices including special programmable keys, proximity readers, keypad ID entry, programmed vehicle transmitters, etc. are used in addition to card lock/card access for controlling small unattended dispensing sites. I believe a better description would be:

**(2) An electronic control device for limited access dispensing. (ITRCC)**

*Response* (to the above three comments): IDEM agrees with the commentors on the rule language at 329 IAC 9-9-2(e), and has made the necessary changes to the draft rule language with a slight rephrasing of the comment language to make it consistent with the rest of the rule.

*Comment:* **General Provisions**

When required to list contact information at an unattended facility, we are requesting that IDEM allow owners and operators to list an 800 number that is staffed 24 hours per day, 365 days per year rather than requiring them to designate a specific individual's phone number as the tank operator contact for a given UST facility. This will allow companies to contact the appropriate tank operator currently on duty, or other appropriately trained personnel to respond

to and manage a spill or release in the most expeditious manner possible. Therefore, we recommend the following wording change.

**329 IAC 9-9-3(c)**

**The owner or operator of an unattended facility is not required to designate a Class C operator or have a Class A, Class B, or Class C operator present on-site during the operation of the tank system. A sign must be posted in a conspicuous place stating the emergency shut-off procedures and the name, address, and telephone number that will reach a of the ~~Class B~~ tank operator for the UST system along with the name and telephone number of the local emergency responders, including 911 personnel. However, the designated operators for the UST system remain responsible for operation and maintenance activities and responding to alarms and emergencies and must otherwise meet the requirements of this rule. (AT&T, EHSCP)**

*Response:* IDEM agrees with the commentors on the rule language at 329 IAC 9-9-3(c), and has made the necessary changes to the draft rule language with a slight rephrasing of the comment language to make it consistent with the rest of the rule.

***Comment:* Classification of Operators**

It appears that the requirement that the Class C operator be an employee is based upon the belief that the entities operating the tanks are petroleum retail companies whose business relies upon the use of tanks. For such parties the requirement that the operator is an employee makes sense. However for those who have tanks that are incidental to their business, such as those tanks associated with emergency generators, the requirement makes no sense and provides no environmental benefit. In addition, it will require owners to train operators who are not involved with tank management and who will be less effective in the performance of the required duties than a person knowledgeable about tanks. Therefore, if maintaining the UST system is within a vendor or contractor's scope of duties and they can take appropriate action in response to an emergency, there is no reason why they could not be the designated Class C operator. So long as the designated contractor completes the required training and passes the required test, it should not matter whether the Class C operator is an employee or vendor, human health and the environment will be protected in either case. Therefore, we recommend the following wording change.

**329 IAC 9-9-5(c)**

**A Class C operator is ~~an employee of the UST system facility~~ a designated individual who has ~~on-site~~ responsibility to initially respond to alarms or other indications of emergencies caused by spills, leaks, or releases from UST systems. The Class C operator notifies the Class B or Class A operator for the UST system and appropriate emergency responders, including 911 personnel, when necessary. This operator also controls or monitors the dispensing or sale of regulated substances, where it occurs. (AT&T, EHSCP)**

*Response:* IDEM has carefully reviewed the comments on 329 IAC 9-9-5(c) but does not agree with the recommended changes for the following reasons: First, unattended facilities (including USTs only associated with emergency generators) are not required to have a Class C operator at all under 329 IAC 9-9-3(c). Second, the EPA grant guidelines specify that a Class C operator must be an on-site employee.